

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-1067

SHELIA SMITH,

APPELLANT

V.

KOHLER COMPANY & CRAWFORD &
COMPANY,

APPELLEES

Opinion Delivered April 1, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F602358]

REVERSED AND REMANDED

DAVID M. GLOVER, Judge

In this workers' compensation case, the administrative law judge determined that appellant, Shelia Smith, had sustained compensable specific aggravations of a preexisting condition to her shoulders and awarded her benefits in the form of medical expenses and temporary-total disability benefits from February 9, 2006, to December 20, 2006. The Commission reversed, finding not only that Smith did not suffer a compensable specific injury, neither did she suffer compensable gradual-onset injuries to her shoulders.¹ The Commission further stated that because it found that Smith had failed to prove that she sustained a compensable injury, the respondents' argument regarding the statute of limitations was moot. Smith now appeals, arguing that the Commission's decision that she

¹Smith makes no argument in her brief regarding the Commission's finding that she did not suffer a compensable specific-incident injury; rather, she only focuses on the denial of her claim that she suffered gradual-onset injuries in her shoulders.

failed to sustain her burden of proving a compensable gradual-onset injury is not supported by substantial evidence. We reverse and remand this case to the Commission for further findings.

In *Cedar Chemical Company v. Knight*, 372 Ark. 233, 236-37, 273 S.W.3d 473, 475-76 (2008) (citations omitted), our supreme court reiterated the appellate courts' standard of review in workers' compensation cases:

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. Substantial evidence exists if reasonable minds could reach the Commission's conclusion. The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision.

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony.

Smith began working for Kohler in 1995, and from 1995 to 2004, she was an assembly operator on the faucet line, building faucets from scratch using air guns and wrenches. Smith explained that the parts for the faucets were located on shelves, that she was 5'2" tall, that most of the shelves were above her, that she had to "tip toe" to reach the shelves, and that she would be required to reach above her head all day long for eight or more hours per day. Smith further stated that she was required to keep a certain pace in this job,

and that the employer always wanted them to have “at least 105% back then.”

Smith testified that in March 2000, she was working on a different line where the shelves were much taller and that something in her right shoulder and neck “popped” as she was working. She reported this to her supervisor, who sent her to the office to make a report. Smith received medical care, which was paid for by workers’ compensation, and she treated with Dr. Safman into 2001, but she stated that she got to a point where Dr. Safman could not do anything else for her. Smith continued working the same job, and Kohler made no job accommodations to reduce the stress on Smith’s shoulder. Smith continued to have problems “off and on” with her right shoulder into 2002.

Smith said that in January 2003 her right shoulder began to get worse, and she saw Dr. Gullett, who sent her to Dr. Verma. Smith explained that she continued to work and that her left shoulder was not bothering her too much in 2002 and 2003, but that her neck was bothering her. She said that there were no changes in her job.

Smith testified that by July 2004, her left shoulder was bothering her. She thought it started hurting from overuse because when her right shoulder would get tired she would begin using her left shoulder “a whole lot more.” She said that she told her supervisor about her left shoulder, but that nothing was done about it, and Kohler did not offer for her to see a doctor about her left shoulder. Smith stated that she went on her own to see Dr. Dedman, who, in the summer of 2004, referred her to Dr. Gullett again.

Smith testified that there was a change in her job in 2004. She began going to get

parts herself and setting them up on her line because she was told by her supervisor that the people who brought parts to the line could not keep up with her line, even though she was the only one working on it. Smith said that she took a few months off in 2004 because of her shoulder, and when she returned, her supervisor told her that it would be in her best interest if she moved to the subassembly line because it would be less “wear and tear” on her shoulders. Smith testified that when she moved to subassembly, she was putting shower heads together, and taping them up. Then, another worker would put them on the shelf for her, but she would have to get them off the shelves and put them on the line, and three of the shelves were over her head, requiring her to reach over her head to get to the shelves. After she returned to Kohler, Smith did this job until she stopped working there. She testified that when she was working in subassembly, on average, she would do 2000 to 3000 bags per day. She said that the pull-out shower heads, which were the ones on her subassembly line, required more pressure when putting the aerators on, and that it put stress on her shoulder when she had to tighten the heads. She said that in January 2006, both of her shoulders began to hurt “pretty bad.” She stated that she told her supervisor, but that he just laughed and did not send her to a doctor. She testified that she went to Drs. Dedman and Gullet on her own, then filed for workers’ compensation after she saw Dr. Gullett, and that she has had medical treatment since that time. Smith had surgery on her left shoulder in June 2006, and she is now restricted from doing any overhead work, although she can do work that is below shoulder level.

A compensable injury is defined, in pertinent part, as

An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is caused by rapid repetitive motion.

Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Supp. 2007). “For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.” Ark. Code Ann. § 11-9-102(4)(E)(ii).

The Commission’s basis for denying Smith’s gradual-onset claim is as follows:²

The instant claimant agreed on direct examination that she was “required to keep a certain pace” at work. Nevertheless, neither the claimant’s testimony nor the medical records showed how rapidly the claimant’s stated repetitive actions were performed. There was no evidence that the repetitive actions described by the claimant were performed rapidly. Without such a showing, the claimant’s claim is not compensable. . . . The Full Commission therefore finds that the claimant did not prove that she sustained a compensable gradual injury causing physical harm to either her left or right shoulder. The claimant did not prove that a compensable injury was the major cause of the disability or need for treatment for either shoulder. The claimant also did not prove that [t]he surgery performed by Dr. Hudson was causally related to a compensable injury.

The Commission is incorrect when it states that there was no evidence that the repetitive actions were performed rapidly, as correctly noted by Commissioner Hood in his dissent.

²In its opinion denying Smith benefits, the Commission discussed specific-incident injuries in depth; however, because Smith has limited her argument to the denial of her claim for a gradual-onset injury, there is no reason to discuss the Commission’s findings regarding a specific-incident injury.

Smith testified that when she was working the subassembly line beginning in 2004, she would do 2000 to 3000 bags per day. As Commissioner Hood pointed out, using the low end of the estimate, that is approximately one bag every fifteen seconds. Clearly, that is evidence of rapidity, which the Commission ignored when it included the incorrect statement in its full opinion that there was no evidence that the repetitive actions described by the claimant were performed rapidly. For this reason, we remand this case to the Commission for further findings in light of the fact that there was evidence that Smith's job involved rapid-repetitive motion.

We finally note that even though the Commission found the statute-of-limitations issue to be moot due to its determination that Smith had failed to prove that she suffered either a specific incident or gradual onset compensable injury, both appellant and appellees address it in their briefs. But without any findings from the Commission, this court cannot address that issue. Accordingly, depending upon the Commission's additional findings, this issue may arise again and may very well require that the Commission address it.

Reversed and remanded to the Commission for further findings.

GRUBER and MARSHALL, JJ., agree.